

REMARKS

Since receiving the Office Action of March 11, 2005, Applicant has endeavored to secure objective evidence of non-obviousness. Applicant herein provides this evidence so that it may be timely considered.

The initial feedback from Applicant's release of a product exemplifying the claimed invention was that no one believed it could be done. After following up with individuals who had posted on various internet message boards, Applicant has secured two declarations from experts in the field that show their initial skepticism that the invention would work and their amazement that the invention worked as advertised. Applicant introduces these declarations through a declaration of the inventor. All three declarations are provided under 37 C.F.R. § 1.132.

The declaration of the inventor identifies the product he sells that embodies the claimed invention. The inventor further declares that experts in the automotive emissions industry were extremely skeptical of the ability of the product to perform these functions. The declarations of Tom Roberts and Jerry Truglia, both experts in the field of automotive emissions, are provided to support the inventor's belief that the experts were skeptical about the ability of the product to perform as claimed.

Pursuant to MPEP § 716.01(a), timely presented declarations containing evidence of skepticism of experts must be considered by the Examiner in determining the issue of obviousness of the claims. Neither Tom Roberts nor Jerry Truglia has any interest in the present application or Applicant's business. Furthermore, the original statements made on the message boards and provided as evidence in support of their declarations were unsolicited and were not made with any thought about presentation of these opinions to the Patent Office. As such, these statements reflect unbiased, unvarnished opinions of these experts, and are entitled to more weight than a simple statement by the inventor. Applicant notes that MPEP § 716.05 states that expressions of disbelief by experts constitute strong evidence of nonobviousness.

The existence of 40 C.F.R. § 86.099-17, and the failure of the automotive industry to satisfy the requirements set forth therein for over five years, represents evidence of a long-felt need for Applicant's invention. Specifically, the regulation shows a clear recognition that there needs to be a way to identify which cylinder is misfiring and has been since the regulation was passed in 1998. The failure of the automotive industry to comply with this regulation, despite its

non-optional nature, shows that there was not a lack of interest nor lack of appreciation of the problem, but rather was the result of a lack of technical know-how.


When the Patent Office considers Applicant's previously filed amendments and remarks, Applicant requests that the Patent Office also consider this evidence of a long-felt need and the skepticism of experts when determining patentability.

Applicant earnestly solicits claim allowance at the Examiner's earliest convenience.

Respectfully submitted,


WITHROW & TERRANOVA, P.L.L.C.

By:



Taylor M. Davenport  
Registration No. 42,466  
P.O. Box 1287  
Cary, NC 27512  
Telephone: (919) 654-4520

Date: July 20, 2005  
Attorney Docket: 1068-001

<b>CERTIFICATE OF TRANSMISSION</b>	
I HEREBY CERTIFY THAT THIS DOCUMENT IS BEING TRANSMITTED VIA FACSIMILE ON THE DATE INDICATED BELOW TO:	
Examiner: <u>Hosnu, Johnny H.</u> Art Unit: <u>3747</u> Fax: <u>703-872-9306</u>	
<u>Taylor M. Davenport</u>	Name of Sender
	Signature
<u>7/20/05</u>	Date of Transmission